



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) Magistrate No. '08 MJ 8069
)
Plaintiff,) COMPLAINT FOR VIOLATION OF:
)
v.) Title 18 U.S.C. § 3144
) F.R.Crim.P. [Material Witness]
Miguel Angel CRUZ-Marcos)
)
Material Witness.)
-----)

The undersigned complainant being duly sworn states:

That on or about January 21, 2008, within the Southern District of California, material witness, Miguel Angel CRUZ-Marcos, did witness and observe defendants "F.R.H." and "P.M.D." transport into the United States two undocumented aliens, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii). The Material Witness testimony is essential to support a petition in the State of California Juvenile Court against the minors and whose whereabouts at the time of trial will be a foreign country, or unknown, a warrant for his arrest should be issued, and he should be detained until his testimony can be secured. The affiant further alleges that the above-referenced material witness is a citizen and native of Mexico with no legal right

1 to remain in the United States, and have no apparent means of support
2 or family ties.

3 Therefore, the above-referenced material witness is a material
4 witness under Title 18, United States Code, Section 3144.

5 This complainant states that this complaint is based on the
6 attached Statement of Facts incorporated herein by reference.

7 DATED: January 25, 2008

8
9 MICHAEL MIKUSKI
10 U. S. BORDER PATROL AGENT

11 SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 25TH DAY
12 OF JANUARY, 2008.

13
14
15 PETER C. LEWIS
16 UNITED STATES MAGISTRATE JUDGE
17
18
19
20
21
22
23
24
25
26
27
28

1 Material Witness

2 Miguel Angel CRUZ-Marcos

3 STATEMENT OF FACTS

4 1. I am a Senior Patrol Agent with the United States Border
5 Patrol, assigned to the El Centro Sector Prosecutions Unit. This
6 affidavit is made in support of a material witness complaint and
7 arrest warrant, pursuant to Title 18, United States Code, Section
8 3144, for Miguel Angel CRUZ-Marcos. This application seeks the
9 Witness's detention so that his testimony may be secured for trial
10 in the Southern District of California.

12 2. The United States Government has filed a juvenile petitions
13 against "F.R.H." and P.M.D.", within the State of California's
14 Juvenile Court system for the violations of Title 8, United States
15 Code, Section 1324, Transportation of Illegal Aliens within the
16 Southern District of California. The Government has also filed
17 petitions for "F.R.H." for violating California State Penal Code 148
18 (a)(2), Resist, Obstruct, Delay of Public Officer

20 3. On January 21st of 2008, Border Patrol Agents of the El
21 Centro Sector encountered both "F.R.H." and "P.M.D." as they attempted
22 to smuggle three illegal aliens for financial gain.

23 4. At approximately 3:46 P.M. Border Patrol Agent T. Reber
24 attempted to stop a white Ford Crown Victoria, bearing California
25 registration plate of 5LUUM948, to further investigate a possible
26 violation of 8 U.S.C. 1324. Agent Reber could see two visible front
27 seat occupants. Using the emergency lighting and sirens on his Border
28 Patrol Vehicle attempted to stop the Ford. The driver, later

1 identified as "F.R.H.", accelerated away from the agent thus failing
2 to yield and endangering the motoring public. Agent Reber
3 discontinued pursuit as "F.R.H." exceeded the posted speed limits.
4 Agent Reber reported the Ford was last seen driving eastbound on
5 Interstate 8.

6 5. At approximately 4:00 P.M. Agent I. Cerda encountered a white
7 Ford Crown Victoria traveling northbound on state Highway 111. Agent
8 Cerda was able to confirm this Ford had the same California
9 registration plate as that of the Ford Agent Reber had attempted to
10 stop but failed to yield for him. Agent Cerda continued to follow the
11 Ford and could only see two visible front seat occupants. Agent Cerda
12 attempted to have agents respond and to get into position to assist
13 him with stopping the Ford.

14 6. As the Ford passed Agent Penhallegon's position, Agent
15 Penhallegon recognized the driver, "F.R.H.", and the passenger,
16 "P.M.D.", from previous apprehensions for their involvement in
17 smuggling schemes and that they both are undocumented alien to the
18 United States. Agent Penhallegon reported this to fellow agents in
19 the area.

20 7. Still following the Ford, Agent Cerda could see the driver,
21 "F.R.H.", looking in the rear view mirror at him. "F.R.H." then
22 accelerated away from Agent Cerda.

23 8. East of the city of Niland, California, based on the
24 observations of the agents and the fact Agent Cerda could see multiple
25 individuals popping up and down in the rear seat of the vehicle, using
26 the lights and siren of his Border Patrol Vehicle Agent Cerda

1 attempted to stop the Ford. Again "F.R.H." failed to yield to the
2 agent and accelerated away from him.

3 9. After approximately one mile "F.R.H." finally stopped the
4 Ford for the agent. Agent Cerda removed "F.R.H." from behind the
5 steering wheel of the Ford.

6 10. Agents questioned the occupants of the Ford and determined
7 them all to be citizens of countries other than the United States
8 illegally in the United States.

10 11. Material Witnesses to the incident are able to provide
11 positive identification of the principal, "F.R.H." and the co-
12 principal, "P.M.D.", as having a significant part in the smuggling
13 scheme. The Material Witnesses are also able to provide significant
14 testimony which would cooberate the statements of the Agents.

15 12. Based on the foregoing, I respectfully submit testimony from
16 MIGUEL ANGEL CRUZ-MARCOS at trial will be material.

17 13. In addition, it will not impractical to secure the presence
18 of MIGUEL ANGEL CRUZ-MARCOS by subpoena for the following reasons:

20 a. MIGUEL ANGEL CRUZ-MARCOS is not a citizen of the United
21 States and currently resides in Mexico with his family;

22 b. MIGUEL ANGEL CRUZ-MARCOS does not possesses any
23 immigration documentation to be, reside or live in the United States
24 lawfully.

25 c. MIGUEL ANGEL CRUZ-MARCOS has an incentive to avoid
26 coming to the United States and appearing in court as a government
27 witness as he was trying to illegally enter the United States without
28 properly filing for admittance.

1 14. I believe that, based on the facts set out above, there is
2 no condition or combination of conditions that would reasonably assure
3 the appearance of MIGUEL ANGEL CRUZ-MARCOS. Accordingly, I
4 respectfully request that a complaint and arrest warrant be issued for
5 MIGUEL ANGEL CRUZ-MARCOS.
6

7 WHEREFORE your affiant prays that the Court issue a material
8 witness warrant for MIGUEL ANGEL CRUZ-MARCOS, and he be imprisoned or
9 bailed as the case may be.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28